



# UNITED STATES PATENT AND TRADEMARK OFFICE

*ms*  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,309	11/16/2001	Kristopher W. Gerulski	J-3047A	1717
28165	7590	07/15/2004	EXAMINER	
S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236			PETERSON, KENNETH E	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/993,309

Applicant(s)

GERULSKI ET AL.

Examiner

Kenneth E Peterson

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3724

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurh, who shows a container having most of the recited limitations including a bottom wall (34), a back wall (22), a front wall (38) a top lid wall (16), end walls (36,40) and retention walls (26c) having semicircular cutouts (26a) and a brace (26b).

Hurh's retention walls (26c) are attached to the back wall instead of to the bottom wall. However, the courts have long held that it is obvious to shift the location of parts, so long as the operation of the device is not thereby modified. See In re Japikse, 86 USPQ 70. In this case, there is no invention in swapping the locations of the end walls (36) and the retention walls (26c). Likewise, there is no invention in shifting the location of the brace (26b) to the front or back of the retention wall (26c).

Examiner further takes Official Notice that it is old and well known for the retention wall to be attached to the bottom wall. Examples of this are the patents to Holcombe and Feinberg. It would have been obvious to one of ordinary skill in the art to have shifted the retention wall from a back wall connection to a bottom wall connection, as ruled by the courts in In re Japikse, as is old and well known, and as taught by Holcombe and Feinberg, since this is a well known equivalent known for the same purpose and because the operation of the device would not thereby be modified.

Art Unit: 3724

In regards to claims 3, Hurh's angled bracing flap (26b) is not wedge shaped. However, in the art of making containers from sheets of cardboard, Examiner takes Official Notice that it is well known to bevel various flaps, thus making them wedge-shaped, in order to ease assembly of the device. A prime example of this is shown by Hurh himself with flaps 17 and 36. It would have been obvious to one of ordinary skill in the art to have made Hurh's angled bracing flap (26b) be wedge-shaped, as taught by Hurh himself, in order to ease the assembly of the container (less prominent corners to catch on one another).

In regards to claim 10, Hurh is silent on what kind of material his container is made out of. Examiner takes Official Notice that it is well known to make wound film dispensers out of single-ply chipboard. It would have been obvious to one of ordinary skill in the art to have made Hurh's container out of single-ply chipboard, as is well known, in order to cheaply manufacture it.

3. Claims 1,4,5,7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feinberg, who shows a container having most of the recited limitations including a bottom wall (10), a back wall (12), a front wall (11) a top lid wall (28), end walls (13,15) and retention walls (20) having circular cutouts (25).

Feinberg lack a brace on the retention wall (20). Examiner takes Official Notice that it is well known for cardboard dispenser boxes of this type to employ braces to keep various flaps in place. An example of such is the patent to Hurh (see brace 26b). It would have been obvious to one of ordinary skill in the art to have modified Feinberg by

Art Unit: 3724

adding a brace to the end piece (23) of the retention wall (20), as is well known and suggested by Hurh, in order to help maintain the position of the end of the retention wall. The brace could be adjacent the front wall as suggested by Hurh, with a vertical fold line.

In regards to claims 3, Feinberg's new bracing flap is not wedge shaped. However, in the art of making containers from sheets of cardboard, Examiner takes Official Notice that it is well known to bevel various flaps, thus making them wedge-shaped, in order to ease assembly of the device. A prime example of this is shown by Hurh with flaps 17 and 36. It would have been obvious to one of ordinary skill in the art to have made Feinberg's new bracing flap be wedge-shaped, as taught by Hurh, in order to ease the assembly of the container (less prominent corners to catch on one another).

In regards to claim 10, Feinberg is silent on what kind of material his container is made out of. Examiner takes Official Notice that it is well known to make wound film dispensers out of single-ply chipboard. It would have been obvious to one of ordinary skill in the art to have made Feinberg's container out of single-ply chipboard, as is well known, in order to cheaply manufacture it.

4. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant's testimony that Shiffler was commonly owned at the time of invention has overcome the rejection by Shiffler, thus resulting in new rejections.

Art Unit: 3724

It is noted that Applicant has not yet claimed that the retention walls are oblique to all the other walls. The phrase "extending at an angle" includes angled at 90°. Nor has Applicant claimed that the brace has angled edges that correspond to the angle of the retention wall.


5. Applicant's testimony about the Shiffler patent necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Peterson whose telephone number is 703-308-2186. The examiner can normally be reached on Monday thru Thursday between 7am and 4pm.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9306. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

kp July 8, 2004

  
KENNETH E. PETERSON  
PRIMARY EXAMINER